

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Misc. No. 1-02

In Re: RULES OF PRACTICE AND PROCEDURE

Before KRAMER, *Chief Judge*, and FARLEY, HOLDAWAY,
IVERS, STEINBERG, and GREENE, *Judges*.

ORDER

Pursuant to the authority of 38 U.S.C. §§ 7263(b) and 7264(a) and consistent with 28 U.S.C. § 2071(b), the Court has determined the need to undertake a comprehensive revision of its Rules of Practice and Procedure. In reaching this determination, the Court has benefitted from the views of its Rules Advisory Committee. It is

ORDERED that the attached proposed comprehensive revision of the Rules of Practice and Procedure is hereby published. Public comment on these changes is invited. Such comment must be submitted to the Clerk of this Court at 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950, by November 1, 2002.

DATED: September 17, 2002

BY THE COURT:

KENNETH B. KRAMER
Chief Judge

Attachment

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

RULES OF PRACTICE AND PROCEDURE

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[Note: Unless otherwise noted, these proposed changes are based on the simplifying language used in the latest version of the Federal Rules of Appellate Procedure (FRAP), including the replacement of “shall” with “must” as the term that directs action by a person and with “will” as the term relates to actions by the Clerk. Minor grammatical, punctuation, style, and consistency changes are not highlighted.]

RULE 1. SCOPE OF RULES

(a) **Scope.** These rules govern practice and procedure ~~before~~in this Court (the Court) ~~to review decisions of the Board of Veterans' Appeals (Board), and in applications for other relief which this Court or one of its judges is competent to give.~~

(b) ~~Rules Not to Affect~~Effect on Court's Jurisdiction. These rules do not extend or limit the jurisdiction of the Court as established by law.

RULE 2. SUSPENSION OF RULES

~~To expedite a decision, or for other good cause shown~~On its own initiative or on a party's motion, the Court may—to expedite its decision or for other good cause—suspend the application of any provision of these rules in a particular case and may order proceedings in accordance with its direction, but the Court may not extend the time for filing a Notice of Appeal as it directs, consistent with applicable law and precedent.

[Reason: The Court may set alternate procedures only to the extent that they do not conflict with statutory law or controlling precedent, this power is not unlimited. The reference to the Notice of Appeal is deleted because it is covered in Rule 26(b).]

RULE 3. HOW TO APPEAL

(a) **Filing.** ~~An appeal will be taken~~an appellant may appeal to the Court only by filing a written Notice of Appeal with the Clerk of the Court (Clerk), including transmission by facsimile (fax), within the time allowed by Rule 4(a). ~~A Notice of Appeal may be filed by facsimile sent to the Clerk of the Court.~~ Failure of an appellant to take any step under these rules ~~after other than~~the timely filing of a Notice of Appeal does not affect the validity of the appeal, but may be grounds for such action as the Court deems appropriate, which may include including dismissal of the appeal.

(b) **Service.** The appellant ~~shall~~must serve ~~on the Secretary of Veterans Affairs (Secretary), and any other party to the proceedings before the Board,~~a copy of the Notice of Appeal on any party (other than the Secretary of Veterans Affairs (Secretary)) to the proceedings before the Board of Veterans' Appeals (Board). See Rule 25.

(c) **Content.** The Notice of Appeal ~~shall~~must --

(1) name the party or parties taking the appeal show the most recent name, address, and telephone number of the person or persons taking the appeal, and the appropriate Department of Veterans Affairs (VA) claims file number;

(2) designate reasonably identify the Board decision appealed from and be able to be reasonably construed, on its face or from the circumstances of its filing, as expressing an intent to seek Court review of that decision; and

(3) include the addresses of the appellant(s) and of any representative if the Notice of Appeal is filed by a representative other than one making a limited appearance, be accompanied by a notice of appearance and its attachments. See Rule 46(d)(2) and subsection (f) of this rule.

Form 1 in the Appendix of Forms is a suggested, but not required, form ~~off~~for a Notice of Appeal. ~~An appeal will not be dismissed for informality of the Notice of Appeal.~~

(d) **Joint or Consolidated Appeals.** If more than one person is entitled to appeal from a decision of the Board and their interests make joinder practicable, they may file a joint Notice of Appeal or may join in an appeal after filing separate timely Notices of Appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Court on its own initiative or on a party's motion of a party.

(e) **Payment of Fees.** ~~Upon the filing of any separate or joint A Notice of Appeal must be accompanied by from a decision of the Board, each appellant shall include with the Notice of Appeal a \$50.00 nonrefundable filing fee, paid by check or money order payable to "U.S. Court of Appeals for Veterans Claims." If a~~An appellant who believes that the payment of the fee will impose would be a financial hardship, the appellant may obtain a waiver of the fee by including with the Notice of Appeal a declaration of financial hardship on the form prescribed at Form 4 in the Appendix of Forms. See by filing a declaration of financial hardship in accordance with Rule 24. If the Court accepts the declaration, the fee will be waived. If the declaration is rejected for filing by the Court, the fee or an acceptable declaration must be received by the Court within the time set by the Court's order or the appeal will be dismissed. If a fax Notice of Appeal is filed, the filing fee or declaration must be received by the Court within not later than 14 days after the fax was sent.

(f) **Limited Appearance.** See Rule 46(d)(6).

(g) **Addresses and Fax Number.** The Court's mailing address is Clerk of the Court, U.S. Court of Appeals for Veterans

Claims, 625 Indiana Avenue, N.W., Suite 900, Washington, D.C. 20004-2950. The Court's fax number is (202) 501-5848. The Court's web site is found at <www.vetapp.gov>. The Secretary's representative's address is General Counsel (027), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420-0002.

[Reason: Subsection (b) is revised because the statutory requirement to serve a copy of the Notice of Appeal (NOA) on the Secretary has been revoked, but service is still needed for other parties so that they can consider possible intervention. Subsection (c)(1) is revised to require inclusion of the VA claims file number in the NOA because VA needs it to locate the correct Board decision, although the Court protects personal privacy by no longer including that number in Court notices, orders, and decisions and the change proposed to Rule 32(e) deletes the requirement to include that VA number in other papers filed with the Court. The additions to subsection (c)(2) are (1) to allow for a variety of means of identifying the decision being appealed and (2) to incorporate the standard established in Calma v. Brown, 9 Vet.App. 11, 15 (1996) ("[A]n NOA need not contain a literal statement that a [Board of Veterans' Appeals (JBVA)] decision is being appealed to the Court, as long as the intent to seek Court review is clear from the document as a whole and the circumstances of its filing with the Court."). Subsection (c)(3) is changed to highlight the Rule 46 requirement for a notice of appearance. Subsection (e) is revised to eliminate duplication with Rule 24. Subsection (g) is added to consolidate into one place addresses and fax numbers found in other rules.]

RULE 4. WHEN TO FILING APPEAL; DOCKETING; BOARD DECISION

(a) Time for Appeal. ~~To obtain review by the Court of a Board decision, a person adversely affected by that decision must file a~~ Notice of Appeal must be received by the Clerk not later than 120 days after the date on which the Board mailed notice of the decision to the last known address of the appellant and the appellant's authorized representative, if any. A Notice of Appeal ~~shall be~~ deemed to be received --

(1) on the date of its legible postmark, affixed by the United States Postal Service (not including a postage-metered date imprint other than one affixed by the United States Postal Service) on the cover in which the Notice of Appeal is posted, if the mailing is properly addressed to the Court and is mailed; or

(2) on the date of its receipt by the Clerk, if it does not bear a legible postmark affixed by the United States Postal Service, or if it is delivered or sent by means other than United States mail, including fax.

But see Rule 25(b)(3) as to an ~~incarcerated~~ appellant confined in an institution.

(b) Notice of Docketing.

(1) Docketing the appeal. Upon receipt of the Notice of Appeal, the Clerk will docket the appeal, identifying the appellant by name, unless otherwise ordered by the Court.

(2) Designation of public official. The Secretary will be described as the appellee by name and official title.

(3) Notice of Docketing. The Clerk ~~shall~~ will send a Notice of Docketing to all parties advising them of the date when the Clerk received the Notice of Appeal.

(c) Copy of Board Decision. ~~Within~~ Not later than 30 days after the date of the Clerk's Notice of Docketing, ~~the Secretary shall file and serve a copy of the Board's decision, showing the date the decision was mailed, and shall report the filing date of any motion for its reconsideration and the date and nature of any action on such a motion; (see subsection (b)(3)), the Secretary must file with the Clerk and serve on the appellant a copy of the Board's decision, showing --~~

(1) the date on which notice of the decision was mailed, and

(2) the filing date of any motion for its reconsideration or vacatur and the date and nature of any action on such a motion.

[Reason: Subsection (b) is revised by moving the provisions of Rule 12(a) and 43(c)(1), with minor amendments, into it because they are more appropriate here chronologically.]

RULE 5. ~~SUSPENSION~~STAY OF APPELLATE PROCEEDINGS

~~The Court may suspend proceedings after an appeal has been filed under Rule 4: (1) on motion by the appellant seeking reconsideration by the Board; or (2) by motion of the Secretary for reasons of confession of error, by specifying the error below and the proceedings or remedy deemed to be appropriate on remand. The Court, on its own initiative, may also suspend appellate proceedings. See also Rule 28(b)(2).~~

(a) Grounds. On its own initiative or on a party's motion, the Court may stay its proceedings when --

- (1) a motion has been filed for the Board to reconsider or vacate its decision; or
- (2) a pro bono representation program, operating under a grant or contract made under the authority first provided in Public Law No. 102-229, is conducting case screening and referral; or
- (3) it is otherwise in the interest of judicial efficiency or other good cause is shown.

(b) **Effective Date.** Unless and until the Court grants a motion under this rule, such a motion does not suspend proceedings or interrupt preexisting filing schedules.

(c) **Combined Motions Prohibited.** A motion to stay the Court's proceedings may not be combined with a motion to extend time under Rule 26(b) or any other motion, but must be made and fully justified in a separate motion. The Clerk will return any motion that violates this subsection.

[Reason: A stay suspends all activity in the ongoing proceedings, including preexisting filing schedules and the acceptance of documents for filing. It should not occur routinely and should not be regarded as automatic. This rule change sets specific conditions for stays.]

RULES 6 and 7. (RESERVED)

RULE 8. ~~STAY OR INJUNCTION~~ SUSPENSION OF SECRETARIAL ACTION PENDING DISPOSITION OF APPEAL OR PETITION

A party requesting immediate action by the Court to stay or enjoin an action by the Secretary or the Board pending an appeal to the Court shall do so by filing a motion and serving a copy of the motion on all other parties by an expedited method (including express mail, overnight delivery, facsimile or other printed electronic transmission, or hand delivery). The motion will not be accepted by the Clerk unless a Notice of Appeal has been filed. The motion must state the reason for the relief requested and the facts relied on. If the facts are subject to dispute, the motion must be supported by affidavits or other sworn statements or copies thereof. The motion normally will be considered by a panel of three or more judges of the Court, but in exceptional cases the motion may be acted on by a single judge pending consideration by a panel.

(a) **Filing of Motion.** After an appeal or petition has been filed, an appellant or petitioner seeking a Court order to suspend action by the Secretary or the Board pending proceedings in the Court must file with the Clerk a motion and serve a copy on all other parties by an expedited method (including express mail, overnight delivery, fax or other printed electronic transmission, or hand delivery).

(b) **Content.** The motion must --

- (1) state the reason for the relief requested and the facts relied on; and
- (2) be supported by affidavits or other sworn statements addressing any facts in dispute.

(c) **Court Action.** The motion normally will be considered by a panel of three or more judges, but in exceptional cases the motion may be acted on by a single judge pending consideration by a panel.

[Reason: This rule is revised to eliminate confusion with Rule 5 (Stay of Appellate Proceedings). It also drops use of the term "injunction" because that term connotes extraordinary action under the All Writs Act, which is normally sought through a petition.]

RULE 9. (RESERVED)

RULE 10. DESIGNATION OF THE RECORD ON APPEAL

(a) **Designation.** ~~Within~~Not later than 60 days after the date of the Clerk's Notice of Docketing, the Secretary ~~shall~~must file with the Clerk and serve on the appellant (1) a designation of all material in the record of proceedings before the Secretary and the Board that was relied upon by the Board in ruling against the appellant on the issues listed by the Board and (2) any other material from the record ~~which that~~ the Secretary considers relevant to the appeal. The Secretary ~~shall~~must serve on the appellant a copy of those materials and a list of any record matter ~~which that~~ cannot be duplicated.

(b) **Counter Designation.** ~~Within~~Not later than 30 days after the Secretary serves the designation of the record on appeal, the appellant ~~shall~~must file with the Clerk and serve on the Secretary ~~either~~--

(1) a counter designation of any additional material ~~which~~that was before the Secretary and the Board and ~~which~~that the appellant considers relevant to the appeal, or

(2) a statement that the appellant accepts the content of the record as designated by the Secretary. See also Rule 11(c).

Failure of the appellant to do either will ~~be conclusive of~~constitute the appellant's acceptance of the record as designated by the Secretary.

(c) **Disputes.** If any ~~difference~~dispute arises as to the content of the record on appeal, the Court, on its own initiative or on ~~a party's~~ motion ~~of a party~~, ~~shall~~will resolve the matter. ~~The~~A party's motion ~~of a party~~ ~~shall~~must describe the good faith efforts that have been made to resolve the dispute.

(d) **~~Postdated~~Irrelevant Materials.** The parties should take note that the record on appeal generally may not include materials ~~not relevant to the issues on appeal~~ postdating the Board decision on appeal.

[Reason: This rule is revised in subsection (d) to eliminate the unnecessary reference to relevance, which is already established in subsections (a) and (b)(1) as a prerequisite for inclusion in the record on appeal, and to stress that generally documents postdating the BVA decision are excluded. See Bennett v. Brown, 10 Vet.App. 178 (1997); Burrell v. Brown, 9 Vet.App. 265 (1996) (per curiam order).]

RULE 11. TRANSMISSION OF THE RECORD ON APPEAL

(a) **~~Transmission of the Record.~~** The Secretary ~~shall~~retains the original claims file. The Secretary must and shall transmit to the Clerk two certified copies of the record on appeal to the Clerk, serving and also serve a copy on each party. The Court may direct that additional copies be transmitted.

(1) *Content.* The record, preceded by a table of contents ~~which~~that must subdivides service medical records by calendar year, must be paginated and contain, in this order:

(A) A photocopy of the Board's decision(s) being appealed; and

(B) ~~photocopies of all documents agreed or ordered to be part of the record on appeal, assembled in chronological order, that are agreed or ordered to be part of the record on appeal.~~

(2) *Time.* Unless the Court orders otherwise, the Secretary ~~shall~~must transmit the record ~~within~~not later than 30 days after the appellant's counter designation or statement was due under Rule 10.

(3) *Filing of record; notice to file brief.* Upon receiving the record on appeal, the Clerk will file it and notify all parties when the appellant's brief is due. See Rule 31(a)(1).

(b) ~~Supplementation of Transmitted Record.~~

(1) *Motion.* If, after the record on appeal has been transmitted to the Clerk and before the filing of the appellant's brief (see Rule 31(a)(1)), a party believes that any additional part of the claims file material that was before the Secretary and the Board is relevant to an issue on appeal, the party may, within 30 days after the record on appeal has been filed with the Clerk, file a motion to supplement the record. The motion must identifying the additional material to be transmitted sought to be added to the record on appeal, include a copy of that material if it is in the possession of that party, and describe the steps taken pursuant to Rule 27(a)(4).

(2) *Opposition.* A party who believes ~~additional~~that material sought to be added by another party is beyond the scope of matters relevant to the appeal may, ~~within~~not later than 14 days after service of the motion to supplement, file an opposition to the motion, ~~describing the good faith efforts made to resolve the dispute.~~ The opposition must explain why the material opposed is not relevant to the appeal.

(3) *Supplemental record.* ~~Within~~Not later than 14 days after the motion is ~~decided~~granted in whole or in part, the Secretary ~~shall~~must transmit to the Clerk two certified copies of such supplemental record, assembled in chronological order, paginated, and ~~accompanied~~preceded by a table of contents, and ~~shall~~also must serve a copy on ~~the appellant~~each party.

(4) ~~Other~~Time limits for filing briefs. Unless the Court orders otherwise, supplementation of the record does not extend the time for filing ~~either party's~~any brief.

(c) Access of Parties or Representatives to Original Record.

(1) *Material not subject to a protective order.* After a Notice of Appeal has been filed, the Secretary ~~shall~~must permit a party or a representative of a party to inspect and to copy, subject to reasonable regulation by the Secretary, material in the record

before the Board. ~~Such inspection and copying shall be subject to reasonable regulation by the Secretary.~~

(2) *Confidential information.* On its own initiative or on a party's motion ~~of a party~~, the Court may take appropriate action to prevent disclosure of confidential information. See also Rule 48.

[Reason: This rule is revised to achieve clarity and completeness throughout. The material in paragraph (3) of subsection (a), which is former Rule 12(b), is more appropriate here chronologically.]

~~RULE 12. DOCKETING THE APPEAL; FILING THE RECORD ON APPEAL~~

~~(a) **Docketing the Appeal.** Upon receipt of the Notice of Appeal, the Clerk shall enter the appeal upon the docket under the appellant's name, identified as appellant, unless otherwise ordered by the Court.~~

~~(b) **Filing the Record or Supplemental Record.** Upon receipt of the record on appeal, the Clerk shall file it and notify all parties when appellant's brief is due. See Rules 31 and 47.~~

[Reason: Both parts of this rule are more appropriate chronologically in other rules. See Rules 4 and 11.]

~~RULE 13 and~~ S 12 through 14. (RESERVED)

RULE 15. INTERVENTION

A party who was allowed to intervene before the Board may proceed before the Court as an intervenor without filing a motion, but shall serve on all parties and file with the Clerk, within 60 days after the date of the Clerk's Notice of Docketing in accordance with Rule 4(b), a notice of intent to intervene. A person who did not intervene before the Board and who desires to intervene before the Court in a proceeding initiated by a Notice of Appeal or a petition for extraordinary relief shall serve on all parties and file with the Clerk, within 30 days after the filing of a petition for extraordinary relief or within 60 days after the date of the Clerk's Notice of Docketing in accordance with Rule 4(b), a motion for permission to intervene. The motion must contain a concise statement of the interest of the moving person or party and the grounds upon which intervention is sought and should advise the Court of opposition to the motion, if any. A motion for permission to intervene beyond this time limit will be granted only in extraordinary circumstances.

(a) **By Right.** A person who participated in the proceedings before the Board is entitled to intervene in a case before the Court by filing with the Clerk a notice of intervention and serving a copy on all parties not later than 60 days after the date of the Clerk's Notice of Docketing (see Rule 4(b)(3)).

(b) **With Permission.** Any person who did not participate in the proceedings before the Board and who seeks to intervene in a case before the Court must file with the Clerk a motion for permission to intervene and serve a copy on all parties not later than 60 days after the date of the Clerk's Notice of Docketing (see Rule 4(b)(3)). The motion must contain a concise statement of the interest of the moving person or party and the grounds upon which intervention is sought.

(c) **Extraordinary Circumstances.** After the expiration of the time limit set in subsection (a) or (b), intervention will be permitted only on a finding of extraordinary circumstances.

[Reason: This rule change relaxes the time limit for intervention by permission because the intervenor is most often a self-represented person in an insurance dispute who is unaware that proceedings have been commenced in the Court.]

RULES 16 through 20. (RESERVED)

RULE 21. EXTRAORDINARY RELIEF

(a) **Petition; Service, Content, and Filing.** A party desiring extraordinary relief must file a petition with the Clerk with proof of service on the respondent(s), the Secretary (if not a respondent), and on any other party at an interest; and on the Secretary. The petition must ~~contain~~ --

- (1) ~~a statement of~~ the precise relief sought;
- (2) ~~a statement of~~ the facts necessary to understand the issues presented by the petition;
- (3) ~~a statement of~~ the reasons why the petition should be granted, including why the petitioner has a clear and indisputable right to the writ and why there are inadequate alternative means to obtain the relief sought; ~~and~~

(4) include an appendix containing copies of any order or decision or parts of the record and any other documents necessary to understand and support the petition; and

(5) describe any public officer who is a respondent as the respondent by name and official title.

The requirements of Rules 3(e) and 24 (regarding fees) apply to petitions. Upon receipt of the ~~\$50.00~~ filing fee (unless waived pursuant to Rule 24), the Clerk ~~shall~~will docket the petition and submit it to the Court.

(b) Action on the Petition. Unless the Court concludes that the petition should be denied, it will order the respondent(s) to file an answer to the petition within a fixed time fixed by the order and will send copies of the order to all parties. ~~The order shall be served by the Clerk on the named respondent(s), on the Secretary, and on any other party at interest. Two or more respondents may answer jointly. Any respondent who does not desire to appear in the proceeding may so advise the Clerk and all parties by letter, but such action will not amount to agreement that the petition should be granted.~~ The Clerk ~~shall~~will notify the parties of the time limits for the filing of any briefs and of the date of any oral argument. The proceeding will be given preference~~priority~~ by the Court. ~~The petition may be acted upon after reasonable notice of its filing to all parties.~~

(c) Form and Length of Papers; Number of Copies. Except by permission of the Court, the ~~form and length~~ requirements in Rule 32~~(g)~~ for principal briefs apply to petitions and ~~responses~~answers thereto, except that a petition or answer may not exceed 20 pages. An original and three copies must be filed with the Clerk, but the Court may direct that additional copies be furnished. The petition must be entitled~~captioned~~: "[Name of Petitioner], Petitioner v. [Name and Title of Respondent], Respondent."

[Reason: This rule is revised in subsection (a) to clarify that the same procedures for fee payment and waiver apply to appeals and petitions. Subsection (a)(5) is transferred (with slight modification) from the second sentence of current Rule 43(c)(1). In subsection (c), the page limitation is the same as that imposed by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). Concurrent with the revision of these rules, the Court is issuing a change to its Internal Operating Procedures (IOPs) that will provide for the entry of judgment and the issuance of mandate following the dispositions of petitions. See "Reason" for Rules 36 and 41.]

RULES 22 and 23. (RESERVED)

RULE 24. WAIVER OF FILING FEE

Payment of the filing fee required by Rule 3(e) or Rule 21(a) will be waived, due to financial hardship, in any case where the appellant (or petitioner) submits a declaration of financial hardship and that declaration is accepted for filing. That declaration will be subject to the penalty for perjury pursuant to 28 U.S.C. § 1746, and must either be on the form prescribed at Form 4 in the Appendix of Forms or contain the detail called for in that form. If the declaration is found to lack a signature or to be otherwise noncompliant, it will be rejected for filing, and the Clerk will promptly return it to the appellant (or petitioner); within not later than 14 days (44 days if the declaration is filed by a person located outside a state, the District of Columbia, Puerto Rico, or the Virgin Islands) after the return mailing of such a noncompliant declaration the time fixed by the notice of returned papers, either the fee must be paid or a new declaration that addresses the deficiencies in the noncompliant declaration must be submitted.

[Reason: This rule is revised to permit the use of computer-generated forms that contain the detail required by Form 4, and to recognize that the Court's suspense date for fee payment will be varied by the Court to meet circumstances. The more comprehensive form used by the FRAP is not proposed.]

RULE 25. FILING AND SERVICE

(a) Filing. A paper required or permitted to be filed in the Court must be filed with the Clerk. See Rule 3(g).

(1) Mail. Filing may be accomplished by mail addressed to the Clerk.

(2) Fax. Any paper except a brief filed under Rule 28 may be filed by fax sent to the Clerk ~~at (202) 501-5848~~ if the paper is --

(~~2A~~) preceded by a cover sheet showing the sender's name, address, and telephone and fax numbers; the Court case number and caption; and the number of pages being sent; and

(~~2B~~) has numbered pages and is not more than ten 8½"x11" pages long; ~~if~~ (the page limit does not include the cover sheet or the certificate of service but does include any supporting documents, and the certificate of service. A paper may not be split into multiple transmissions to avoid this page limit).

The sender bears the risk of fax transmission. Court personnel will not provide a confirmed copy, ~~and the sender need not telephone the Court to verify receipt.~~ If ~~all or part of~~ a transmission is illegible in whole or in part or is incomplete, the Court may, ~~but need~~

not, direct the sender to provide a legible or complete copy by mail.

(b) Timeliness.

(1) *Fax filing.* A paper may be sent at any time. A paper—except a Notice of Appeal or an application for attorney fees and expenses—received by the Clerk ~~(A)~~ on any nonbusiness day, or ~~(B)~~ on any business day before 7:00 a.m. on that day, is considered received by the Court on the preceding business day. A Notice of Appeal or an application for attorney fees and expenses filed by fax ~~will be~~ considered received by the Court on the day on which it is received.

(2) *Other papers.* Except as provided in paragraph (1), all papers must be received by the Clerk or deposited in the night box within the time specified for filing. See Rule 45.

(3) ~~Incarcerated Appellant confined in an institution.~~ A paper filed by ~~an un~~ self-represented appellant who is an inmate confined in an institution is timely filed if the paper is deposited in the institution's internal mail system within the time specified for filing; and is accompanied by evidence showing the date of deposit and stating that first-class postage has been prepaid.

(c) Service of Papers Required. A copy of any paper—except a ~~motion to waive the filing fee~~ Notice of Appeal and a declaration of financial hardship—filed by any party or amicus must, at or before the time of filing, be served by a party or amicus on all other parties ~~and amici~~ to the appeal and on any amici. Service on a represented party or amicus must be made on the representative.

(d) Manner of Service. Service may be personal ~~or~~, by mail, or by private commercial carrier for delivery not later than 3 calendar days after delivery to the carrier. Personal service includes delivery of the copy to a responsible person at the office of the representative or the office or home of a party without a representative. The Secretary's representative is the General Counsel; of the Department of Veterans Affairs. (See Rule 3(g)).

(e) Proof of Service. A paper presented for filing must contain either of the following:

(1) An acknowledgment of service by the person served of his or her personal service, showing that person's mailing address; or

(2) a statement certified by the person(s) who made service (see sample on reverse side of Form 1), showing the date and manner of service and the names and addresses of the persons served. Proof of service may appear on or be attached to the paper filed.

[Reason: This rule is revised for the following purposes: In subsection (a), to simplify page-count rules by excluding the certificate of service for fax filings, as has been done for briefs. In subsection (b)(3), to comport with FRAP 4(c). In subsection (d), to allow the use of commercial delivery services, as does FRAP 25.]

NOTE: The Rules Advisory Committee proposed that subsection (b) be revised to add a paragraph (4) that would establish a post-mark rule for briefs, in order to eliminate the mailing-time disadvantage suffered by appellants living significant distances from Washington, DC. The Court believes this is both administratively cumbersome and practically unnecessary in light of the additional 30 days given in Rule 31(a).]

RULE 26. COMPUTATION AND EXTENSION OF TIME

(a) Computing Time.

(1) *General rule.* In computing a period of time set by these rules, or by a Court order, or by a statute, the day of the event that begins the period is not included. The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday; or, if the act to be done is filing a paper in the Court, unless it is a day when the Clerk's Office has been closed by direction of the Chief Judge or when the weather or another condition makes the Clerk's Office inaccessible, as declared by the Court or the Chief Judge. ~~Notice that the Court is closed will be posted publicly, if circumstances permit, and placed on a recording for telephone callers.~~

(2) *Legal holidays.* As used in this rule, "legal holiday" means New Year's Day, ~~Birthday of~~ Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President or Congress.

(3) Notices. Notice that the Court is closed or inaccessible will be posted publicly, if circumstances permit, and placed on a telephone recording.

(b) Extension of Time. The Court, on its own initiative or on a party's motion ~~of a party~~ for good cause shown, may extend the time ~~prescribed~~ set by these rules for doing any act, or may permit an act to be done after the expiration of such time (by granting a motion for leave to file out of time or otherwise), but the Court may not extend the time for filing a Notice of Appeal or an

application for attorney fees and expenses. Individual attorney workload will be considered "good cause" only one time with respect to a motion to extend time for any particular filing.

(1) Time for filing. Effective July 1, 2003, a motion to extend the time set by these rules or by an order or notice of the Court must be filed not less than 14 days before the date sought to be extended. In extraordinary circumstances, such a motion may be filed later than the 14-day deadline, but an accompanying affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 must describe the extraordinary circumstances. An untimely motion not accompanied by an affidavit or declaration will be returned by the Clerk.

(2) Content of motion. In addition to showing good cause, the motion must state the following:

(A) The date to be extended;

(B) the revised date sought;

(C) the total number of days of extension previously granted to the movant for the same act;

(D) the total number of days of extension previously granted to the other party in the case; and

(E) a statement in compliance with Rule 27(a)(4).

(3) Opposition. Any opposition must be filed with the Clerk not later than 5 days after the non-moving party is served with a copy of that motion to extend time. The Court will treat the motion as unopposed if no opposition is filed within this period; this period will not be extended for any reason.

(4) Effect of motion. A motion to extend time does not extend the date on which a pleading or other paper is due to be filed with the Court unless the Court grants that motion. See Rule 5(b).

(5) Return of motion. The Clerk will return any motion that violates this rule.

(c) Additional Time After Service by Mail.

(1) General rule. ~~Wherever~~If a party is required or permitted to do an act, other than the filing of a Notice of Appeal, within a prescribed period after initiated by service of a paper under these rules on that party by another party and the paper is served by mail, 35 days will be added to the prescribed period for doing that act.

(2) Service overseas by Secretary. ~~Whenever such~~If a paper is served by the Secretary in a jurisdiction other than a state, the District of Columbia by mail on an appellant, petitioner, or representative who is located outside the United States, Puerto Rico, or the Virgin Islands, 30 additional days will be added to the prescribed applicable period.

(3) Court orders and notices. Additional time under this rule is not added to the periods prescribed set in Court orders and notices issued by the Court or in Rules 4 (Notice of Appeal), 35 (post-decision motions), and 39(a) (attorney fee applications).

(d) Combined motions prohibited. A motion to extend time may not be combined with any other motion, but must be made and fully justified in a separate motion. The Clerk will return any motion that violates this subsection. See Rule 5(c).

[Reason: This rule is revised for the following purposes: In subsection (a), any day the Court is "inaccessible" is added as an uncounted day, adopting FRAP 26(a)(3). In subsection (b), paragraph (1) provides a future rule requiring the filing of a motion to extend time early enough so that the Court would have the opportunity, which it does not have under the present rule and practice, to deny a motion in an appropriate case before the pleading then due becomes untimely. Paragraph (2) provides that a motion to extend time would, on its face, along with any opposition, present the Court with the information relevant to a decision on the motion. The change in paragraph (5) tracks Rule 5's separate treatment of stays and reduces misunderstanding about when extra time is allowed. Subsection (c) is revised, inter alia, to increase the days added from 3 to 5 when the service of a paper by one party on the other party or parties requires or permits an action to be done within a specific period, but otherwise makes no substantive change from the Court's current practice. Subsection (d) is added to require that motions for leave must stand alone, to facilitate administration and track with Rule 5(c).]

RULE 27. MOTIONS

(a) Content of Motions; Response. Unless another form is required by these rules, an application for relief must be made by filing a motion, with proof of service (see Rule 25(e)) on all other parties. The motion must –

(1) contain or be accompanied by any material required by any of the rules governing such a motion;

- (2) state with particularity the specific grounds on which it is based;
- (3) describe the relief sought; and,
- (4) if the appellant is represented,

- (A) describe the steps taken to contact the other party to determine whether the motion is opposed; and

- (B) indicate whether the motion is opposed and, if so, whether the moving party has been advised that a response in opposition will be filed.

~~A motion~~ Motions should not be accompanied by ~~a proposed implementing orders~~. If a motion is supported by briefs, affidavits, or other papers, they must be served and filed with the motion.

(b) Response. Any party may file a response or opposition to a motion ~~within~~ not later than 14 days after service of the motion, but motions authorized by Rule 8 (~~Stay or Injunction Pending Appeals~~ suspension of Secretarial action pending appeal or petition) may be acted upon after reasonable notice of the motion to all parties, and the Court may shorten or extend the time for responding to any motion.

(bc) Motions for Procedural Orders. Notwithstanding subsection (a) ~~of this rule~~ and except as provided in the next sentence, motions for procedural orders, ~~including any motion for an extension of time under Rule 26(b)~~, may be acted on at any time, without awaiting a response, and, by rule or order of the Court, motions for certain procedural orders may be disposed of by the Clerk. Motions to extend time may be acted on by the Clerk if not opposed within 5 days after service on the other party. See Rule 26(b)(3). Any party who may be adversely affected by such an ~~the~~ action may, by motion, request that the Court reconsider, vacate, or modify the action ~~within~~ not later than 10 days after the action is announced.

(ed) Form, Copies, and Length of Papers; Number of Copies. Except by permission of the Court, the form, ~~length~~, and copy requirements in Rule 32 for principal briefs apply to motions and responses, except that a motion (including a motion filed in lieu of a brief) or response may not exceed 20 pages.

[Reason: In subsection (d), the length of motions and responses was changed to comport with FRAP 27(d).]

RULE 28. BRIEFS

(a) Appellant's Brief. Unless an appellant is self-represented (see subsection (h)), ~~The~~ the appellant's brief must contain the appropriate headings and, ~~in this order~~ the following:

- (1) A table of contents, with page references;
- (2) a table of cases (alphabetically listed), statutes, and other authorities cited, with references to the page of the brief where they are cited, unless the case is expedited under Rule 47;
- (3) a statement of the issues;
- (4) a statement of the case, showing briefly the nature of the case, the course of proceedings, the result below, and the facts relevant to the issues, with appropriate references to the record on appeal;
- (5) an argument, beginning with a summary and containing the appellant's contentions with respect to the issues and the reasons for ~~them~~ those contentions, with citations to the authorities and parts of the record on appeal relied on; and
- (6) a short conclusion stating the precise relief sought.

(b) Secretary's Brief.

(1) Content. The Secretary's brief must conform to the requirements of subsection (a) ~~of this rule~~, but a statement of the issues or of the case need not be made unless the Secretary is dissatisfied with the appellant's statement.

(2) Confession of error. If the Secretary wishes to confess error as to any issue or issues raised by the appellant, but not as to all the issues raised, and the relief that the Secretary deems appropriate as to the confession of error is different from that sought by the appellant, the Secretary ~~shall~~ must include a statement of concession in the brief and identify the relief thereunder that ~~is deemed~~ the Secretary considers appropriate.

(c) Reply Brief. The appellant may file a brief in reply to the Secretary's brief.

(d) Other Briefs. Briefs may be filed by intervenors as directed by the Court. No further briefs other than those described in this rule may be filed except with the Court's permission.

(de) References to the Record. References in the briefs to the record on appeal must be to the pages as transmitted by the Secretary. Commonly understood abbreviations may be used.

(ef) Reproduction of Materials. If determination of the issues requires ~~the study~~ consideration of superseded statutes, rules, or regulations, or unpublished authorities, relevant parts must be reproduced in the brief or in an appendix. Documents in the record on appeal may not be reproduced in or attached to the brief.

(fg) Multiple Appellants. In cases involving more than one appellant, including consolidated cases, any number of appellants may join in a single brief, and any appellant may adopt by reference any part of the brief of another. Appellants may similarly join in reply briefs.

(g) Citation of Supplemental Authorities. ~~When pertinent and significant authorities come to the attention of a party after the party's brief has been filed or after oral argument but before the decision, a party shall promptly advise the Clerk, by letter, with a copy to all other parties, setting forth the citations. If the authority is not readily available in a Reporter system, the party shall provide the Clerk with a copy. The letter must refer to the page of the brief or to a point argued orally to which each citation pertains, and the letter must state without argument the reasons for the supplemental citations. Any response must be made promptly and must be similarly limited.~~

(h) Brief of UnSelf-represented Appellant Party. ~~An un self-represented appellant party (but no other party) may file an informal brief on the form prescribed provided by the Court. All other briefs must conform to the requirements of these rules.~~

[Reason: Because it is not pertinent to the preparation of briefs, subsection (g) is deleted and will appear as new Rule 30(b).]

RULE 29. BRIEF OF AN AMICUS CURIAE

(a) Time. A brief of an amicus curiae must be filed within the time allowed the party whose position ~~it~~ the amicus curiae supports unless the Court permits later filing, in which event the Court will specify the time limit for an opposing party's response. An amicus curiae will be permitted to participate in oral argument only at the invitation of the Court.

(b) Form and Content. An amicus brief must comply with Rules 28(a)(1), (5) and (6); 28(d), (e), ~~(g) and (i)~~ (e) and (f); 30; and 32; and state, at the outset of the brief, which party the amicus curiae supports and the interest of the amicus curiae. The brief should avoid repeating the parties' briefs and should focus on the points not made or not emphasized in them.

RULE 30. CITATION OF NONPRECEDENTIAL AUTHORITY

(a) ~~A party, intervenor, or amicus curiae may not cite as precedent any action of this Court that is:~~

_____ (1) taken by a single judge;

_____ (2) not published in the *Veterans Appeals Reporter*; or

_____ (3) withdrawn after having been published in the *Veterans Appeals Reporter*.

(b) ~~A person may refer to an action described in Rule 30(a)(1), (2), or (3) only when the binding or preclusive effect of that action, rather than its quality as precedent, is relevant. A copy of the action cited must be attached to the document containing such a reference.~~

(a) Citation of Nonprecedential Authority. A party, intervenor, or amicus curiae may not cite as precedent any action designated as nonprecedential by the Court or any other court or that was withdrawn after having been published in a Reporter. Such an action may be referred to only when the binding or preclusive effect of that action (such as via the application of the law-of-the-case doctrine), rather than its quality as precedent, is relevant. A copy of the action referred to must be attached to the document containing the reference.

(b) Citation of Supplemental Authorities. When pertinent and significant authorities come to the attention of a party after the party's brief has been filed or after oral argument but before the decision, a party ~~shall~~ must promptly advise the Clerk, by letter, with a copy to all other parties, setting forth the citations. If the authority is not readily available in a Reporter system, the party ~~shall~~ must provide the Clerk with a copy. The letter must refer to the page of the brief or to a point argued orally to which each citation pertains, and the letter must state without argument the reasons for the supplemental citations. Any response must be made promptly and must be similarly limited.

[Reason: Subsection (a) is amended to include nonprecedential actions of other courts (which includes the Federal Circuit) in this prohibition. Subsection (b) was formerly Rule 28(g); it has been moved here without substantive change, and so is shown as though it is original text at this rule.]

RULE 31. FILING AND SERVICE OF BRIEFS

(a) Time Limits. Except in cases covered by Rule 47 (Expedited Consideration) --

(1) the appellant ~~shall~~must serve and file a brief ~~within~~not later than 30~~60~~ days after the date of the Clerk's notice ~~from the Clerk~~ that the record has been filed;

(2) the Secretary ~~shall~~must serve and file a brief ~~within~~not later than 30~~60~~ days after service of the appellant's brief; and

(3) the appellant may serve and file a reply brief ~~within~~not later than 14 days after service of the Secretary's brief; ~~but, except for good cause shown, any brief must be filed at least 3 days before argument. Service must be pursuant to Rule 25 (Filing and Service).~~

(b) Effect of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, the Court, on its own initiative or on motion by the Secretary, may ~~dismiss~~take appropriate action, to include dismissal of the appeal. If the Secretary fails to file a brief or other response, the Court may take appropriate action.

[Reason: This rule is amended in order to establish a more realistic briefing schedule, similar to that used by the Federal Circuit, and in anticipation of fewer extensions of time being granted in light of the proposed amendments to Rule 26. A superfluous reference in subsection (a)(3) to reply briefs being filed at least 3 days before an oral argument is deleted because the Court generally sets oral arguments only after all filings are complete.]

RULE 32. FORM OF BRIEFS, APPENDICES, AND OTHER PAPERS

(a) Format. Briefs, appendices, and other papers must be printed or typewritten, and may be produced by any copying process that produces a clear black image on white opaque paper; ~~and~~; onion skin paper is not permitted except for papers sent by international mail. Pages must be letter size (8 ½ by 11 inches), with margins at least one inch wide from all edges, and with type or print on only one side of the page.

(b) Type; Spacing. The type or print must be at least 11 points with horizontal spacing (pitch) of no more than 11 characters per inch, for both text and footnotes. Text must be double spaced (except that motions and responses under Rule 27(b) may be single spaced), with no more than three lines of type per inch, but quotations more than two lines long and footnotes may be single spaced. The parties may not use photo reproduction that reduces print size smaller than the size required by this ~~rule~~subsection. This subsection does not apply to pages of an appendix that are legible, un-reduced photocopies of documents ~~of record~~.

(c) Covers. Covers are not required on briefs or appendices but, if used, they should be blue for the appellant, red for the Secretary, green for an amicus curiae or an intervenor, gray for any reply brief, and white for an appendix if separate from the brief. See Form 2 (Sample Brief Cover).

(d) Binding. All papers, other than the record on appeal, must be attached at the upper left-hand corner. The record on appeal must be bound at the top.

(e) Caption. A paper addressed to the Court must contain a caption setting forth the name of the Court, the Court's case number when assigned, the title of the case, ~~the Department of Veterans Affairs claims file number,~~ and a brief ~~title~~heading indicating the purpose of the paper.

(f) Page Numbers. Pages must be numbered in the center of the bottom margin, using Arabic numerals for the pages subject to the page limitation and lower case Roman numerals for the table of contents, tables of citations, certificate of service, and any appendix containing statutes, rules, ~~and~~regulations, and unpublished authorities.

(g) ~~Page Limits~~Length and Number of Copies. Except by permission of the Court or as limited by Rule 47, principal briefs may not exceed 30 pages and reply briefs may not exceed 15 pages, not counting the table of contents; the table of citations; any appendix containing superseded statutes, rules, and regulations, and unpublished authorities; and the certificate of service. An original and three copies of all papers must be filed with the Clerk, but the Court may require that additional copies be furnished. But see Rule 25 ~~concerning~~ (fax filings).

(h) Identification of Proponent. The signature, printed name, address, and telephone number of the representative of record (see Rule 46(d)(1)) ~~and~~or of an ~~un~~self-represented party must appear on a brief or other document ~~being filed with~~submitted for filing to the Clerk.

(i) Noncompliance. The Clerk will return papers submitted for filing that are not in compliance with this rule.

[Reason: This rule is revised to protect personal privacy by removing the VA claims file number—which sometimes is the Social Security number—from all orders, notices, and papers except the Notice of Appeal, and to provide for returning noncomplying briefs.]

RULE 33. ~~APPEAL STAFF~~ CONFERENCE

(a) Participation. The Court may direct the representatives and self-represented parties without representatives to participate in a ~~prehearing staff~~ conference, in person or by telephone, to consider simplification/refinement of the issues and such other matters as may help the Court resolve the case. When necessary following such a conference, the Court will enter an appropriate order to control future proceedings. This rule does not prevent the parties from discussing settlement or agreeing to dismiss the appeal ~~at any time~~ before argument or submission of the case. See also Rule 34(f).

(b) Nondisclosure to Judges. Statements made during a conference may not be disclosed to a judge of the Court as having been made during a conference unless the parties agree in writing to such disclosure. This subsection does not apply to a conference ~~which that~~ has failed to resolve a dispute about the content of the record on appeal.

RULE 34. ORAL ARGUMENT

(a) In General. Oral argument will be allowed only when ordered by the Court and will be held where and when the Court orders. Oral argument normally is not granted on nondispositive matters. The Court may order oral argument on its own initiative or on ~~the party's motion of a party filed with that party's principal brief~~ not later than 30 days after both principal briefs are filed. A motion for oral argument may not be included in any brief. ~~The appellant may also request that oral argument be held in a location other than Washington, D.C.~~

(b) Notice of Argument; Postponement. The Clerk ~~shall~~ will advise all parties ~~whether and~~ and issue a public order as to when and where oral argument is to be heard, ~~and, if so, where and when, and the time to be allowed each side~~ and the time to be allowed each side party, and the judge or judges assigned to the case. Where possible, the Clerk will schedule oral argument so as to minimize inconvenience to ~~appellants or their representatives~~ the parties. A request for postponement of the argument or for the allowance of additional time must be made by motion filed reasonably in advance of the date fixed for argument and must contain a showing of good cause.

(c) Order and Content of Argument. The appellant ~~may~~ will generally open and conclude the argument. A party will not be permitted to read at length from briefs, records, or authorities. In argument on motions, the movant ~~may~~ will generally open and conclude the argument.

(d) Nonappearance of Parties. If any party fails to appear to present argument, the Court will hear argument by any ~~appellant who is present, and may hear argument by any other party who is present.~~ If no party appears, the case will be decided on the briefs and the record on appeal unless the Court orders otherwise.

(e) ~~Use of Physical Exhibits at Argument; Removal.~~ A party who ~~intends~~ wishes to use physical exhibits other than documents ~~shall~~ must arrange with the Clerk to have them placed in the courtroom on the date of the argument before the Court convenes. After the argument, the party ~~shall~~ must remove the exhibits unless the Court otherwise directs. If the exhibits are not reclaimed within a reasonable time after notice is given by the Clerk, they will be disposed of by the Clerk.

(f) ~~Motions.~~ ~~Oral argument normally is not granted on motions.~~

(g) ~~Oral Argument.~~ ~~Oral argument will be held as announced by the Chief Judge. The announcement will indicate the composition of the panel, although there is no guarantee that the panel on the argument date will be identical to that announced since a judge may be recused from a case or, for a number of reasons, may be unavailable.~~ **Settlement.** When the parties enter into negotiations for settlement, they must jointly advise the Clerk of that status as soon as possible. Any notice of settlement must be filed with the Clerk not later than 3 days before the day of a scheduled oral argument on the case.

[Reason: This rule is revised to simplify language and conform to Court practice, and to stress that oral argument may be scheduled by the Court even if not requested by any party. Showings of good cause are added as requirements in subsections (a) and (b). New subsection (f) provides new requirements for the parties when a case set for oral argument enters a settlement-negotiation phase.]

RULE 35. MOTIONS FOR RECONSIDERATION, OR FOR DECISION BY A PANEL OR BY THE FULL COURT

(a) Motion for Reconsideration. A party in a case dismissed by the Clerk pursuant to Rule 45(i) may move for reconsideration by the Clerk. If the Clerk denies such reconsideration, the matter will be referred for decision by a judge. A party in a case decided by a single judge may move for reconsideration by the single judge. ~~A party in a case dismissed by the Clerk~~

~~pursuant to Rule 45(i) may move for reconsideration by the Clerk.~~ A party in a case decided by a panel may move for reconsideration by the panel. A party in a case decided by the full Court may move for reconsideration by the full Court.

(b) Motion for Panel Decision. A party in a case decided by a single judge may move for a decision by a panel of the Court.

(c) Motion for Full Court Decision. A party may move for a decision by the full Court --

(1) initially, or

(2) after a panel has decided a case, or

(3) after a panel has denied a motion for a panel decision or for reconsideration.

A motion for a decision by the full Court in a case decided only by a single judge is not permitted. Motions for a full-Court decision are not favored. Ordinarily they will not be granted unless such action is necessary to secure or maintain uniformity of the Court's decisions or to resolve a question of exceptional importance.

(d) Time for Motion.

(1) Clerk or single-judge action. A motion for Clerk reconsideration ~~or single-judge decision, or both, and, a motion for single-judge reconsideration or, a motion for a panel decision, or both~~ a motion for both single-judge reconsideration and a panel decision, must be filed within ~~not later than~~ 21 days (51 days if the motion is filed by a person located outside ~~a state, the District of Columbia, the United States, Puerto Rico, or the Virgin Islands~~) after the date of the Clerk's or single-judge's decision.

(2) Panel action. A motion for panel reconsideration, for a full-Court decision, or for both, must be filed within ~~not later than~~ 21 days (51 days if the motion is filed by a person located outside ~~a state, the District of Columbia, the United States, Puerto Rico, or the Virgin Islands~~) after the date of the initial panel decision or order denying a motion for a panel decision.

(3) Initial full-Court consideration. A motion for initial consideration of a case by the full Court must be filed within ~~not later than~~ 30 days after the date on which the appellant's brief was served.

(4) Other full-Court consideration. A motion for reconsideration of a case by the full Court must be filed within ~~not later than~~ 21 days (51 days if the motion is filed by a person located outside ~~a state, the District of Columbia, the United States, Puerto Rico, or the Virgin Islands~~) after the date of the initial full-Court decision.

(e) Content of Motion. A motion under this rule must contain a supporting argument. In addition --

(1) a motion for a panel decision or a motion for single-judge, panel, or full-Court reconsideration must state the points of law or fact that the party believes the Court has overlooked or misunderstood, and

(2) a motion for a full-Court decision must state --

(A) how such action will secure or maintain uniformity of the Court's decisions or

(B) what question of exceptional importance is involved.

(f) Form; Length; Number of Copies. Except by the Court's permission, a motion or response (including any supporting memorandum or brief) under this rule ~~must~~ may not exceed 15 pages. The motion must otherwise comply with Rule 27, but it need not indicate whether it is opposed. A motion for a full-Court decision, and any response, must be filed in an original and 7 copies.

(g) Response; Action on the Motion. No response to a motion under this rule may be filed unless it is requested by the Court, but a motion for a panel or full-Court decision ordinarily will not be granted without such a request. A motion for reconsideration will be decided by the judge or panel that rendered the decision. A motion for a panel decision will be referred to a panel. A motion for a full-Court decision will be referred to all of the judges. Consideration by the full Court requires the vote of a majority of the judges. The Clerk ~~shall~~ will return an untimely motion or one that fails to include the statement required by subsection (e) ~~of this rule.~~

[Reason: This rule is revised in subsection (a) to incorporate language from Rule 45(i) that a denial of reconsideration by the Clerk will automatically result in review and a decision by a single judge. Therefore, subsection (d)(1) is revised to eliminate reference to a motion for a single-judge decision, for which there is no basis.]

RULE 36. ENTRY OF JUDGMENT

Unless the Court orders otherwise, the judgment will be entered after the time allowed in Rule 35(d)(1) ~~or (2) or (4)~~ has expired, or after the Court has acted on a timely motion filed under Rule 35(a), (b), or (c) for single-judge or panel reconsideration or for panel decision. The filing of a motion for full Court decision or reconsideration will not postpone entry of the judgment. Entry of the judgment begins the 60-day time period for any appeal to the United States Court of Appeals for the Federal Circuit.

[Reason: This rule is revised, based on experience, to treat motions for a full-Court decision or reconsideration by the full Court the same as motions for single-judge or panel reconsideration and for panel decisions insofar as postponement of entry of judgment. Concurrent with the revision of these rules, the Court is issuing a change to its IOPs that will provide for the entry of judgment (as well as the issuance of mandate) following the dispositions of petitions and applications for attorney fees and expenses. See "Reason" for Rules 21, 39, and 41.]

RULE 37. (RESERVED)

RULE 38. FRIVOLOUS ~~APPEALS~~FILINGS

If the Court determines that an appeal, petition, motion, or other filing is frivolous, it may enter such order as it deems appropriate.

RULE 39. ATTORNEY FEES AND EXPENSES

(a) Time for Filing Application. An application pursuant to 28 U.S.C. § 2412(d) for award of attorney fees and/or other expenses in ~~connection with an appeal or petition~~ a case must be filed with the Clerk ~~within~~ not later than 30 days after the Court's judgment becomes final, ~~which occurs 60 days after entry of judgment under Rule 36~~ pursuant to 38 U.S.C. § 7291(a) or, consistent with Rule 41(b), upon the issuance of an order on consent dismissing, terminating, or remanding a case. The time for filing may not be extended. See Rule 25 (filing and service). The application must include the fees and expenses claimed for the submission of that application.

(b) Supplemental Application. ~~An appellant or petitioner whose application described in subsection (a) of this rule has been granted in whole or in part may, not later than 30 days after the Court action granting such application, file a supplemental application for attorney fees and other expenses in connection with the submission or defense of such subsection (a) application. See Rule 25.~~

(1) General. Except as provided in paragraphs (2) or (3) of this subsection and in subsection (d), a party whose application described in subsection (a) has been granted in whole or in part may, not later than 20 days after the Court action granting such application, file a supplemental application for attorney fees and other expenses in connection with the defense of such subsection (a) application.

(2) Appeals to the Federal Circuit. When an action on an application appealed to the United States Court of Appeals for the Federal Circuit is returned to the Court and the application has been granted in whole or in part by any court, any supplemental application (over which the Court has jurisdiction) based on representation provided in that appeal may be filed in the Court not later than 20 days after the mandate is issued by that court. See FED. R. APP. P. 41; FED. CIR. R. 41.

(3) Appeals to the Supreme Court. When an action on an application appealed to the Supreme Court is returned to the Court and the application has been granted in whole or in part by any court, any supplemental application (over which the Court has jurisdiction) based on representation provided in that appeal may be filed in the Court not later than 20 days after the expiration of the time for filing a petition for a rehearing by the Supreme Court. See SUP. CT. R. 45.

(4) Preparation costs. A supplemental application must include the fees and expenses claimed for the submission of that supplemental application.

(5) Timing of supplemental responses and replies. When a supplemental application is filed under paragraph (2) or (3) of this subsection, the Court will issue an order specifying the timing of responses and replies, in order to ensure that all previous applications have been resolved before requiring a response to the next application.

(c) Response. ~~Within~~ Not later than 30 days after the date on which an application described in subsection (a) or a supplemental application described in subsection (b) or (d) is filed, the Secretary ~~shall~~ must file and serve a response to ~~the~~ that application or supplemental application, ~~stating~~. The response must state which elements of the application or supplemental application are not contested and explaining the Secretary's position on those elements that are contested.

(d) Reply. ~~Within~~ Not later than 30 days after service of any response by the Secretary's response, the applicant may file

and serve a reply addressing those matters contested by the Secretary. Any reply involving a supplemental application described in subsection (b) must include a supplemental application that includes the fees and expenses claimed for the submission of that reply.

(e) **Appendices.** The parties ~~shall file~~ must attach as appendices to ~~the application, response, and reply~~ any pleading filed under this rule those relevant papers ~~which that~~ are not already before the Court.

[Reason: This rule is revised to provide additional clarification on the contents of applications, supplemental applications, responses, and replies; to provide in subsection (a) a more complete reference to finality; to provide in subsection (b)(1) that supplemental applications must be filed within 20 days, which is necessary in light of the fact that, concurrent with the revision of these rules, the Court is amending its IOPs to provide for the entry of judgment (21 days after decision) and mandate following dispositions of applications for attorney fees and expenses (in addition to the judgment and mandate associated with the disposition of the merits of a case); and to provide guidance in subsection (b) for complex cases where multiple applications are possible. Practitioners should note that in order for submission costs to be allowed they must be included as part of each submitted application, supplemental application, or reply in question.]

RULE 40. (RESERVED)

RULE 41. ISSUANCE OF MANDATE; ~~STAY OF MANDATE~~

(a) **Date of Issuance.** The mandate of the Court (which is executed by the Clerk as a ministerial action and is merely evidence that a judgment has become final) will issue no earlier than 60 days after the date of entry of the judgment pursuant to Rule 36 unless the time is shortened or extended by order. If a timely Notice of Appeal to the United States Court of Appeals for the Federal Circuit is filed with the Clerk, the mandate of the Court will issue in accordance with 38 U.S.C. § 7291(a).

(b) **Mandate in Consent Dispositions.** An order on consent (1) dismissing, terminating, or remanding a case or (2) granting or dismissing an uncontested application for attorney fees and expenses will also constitute the final judgment and mandate of the Court.

[Reason: Subsection (a) is amended to add the parenthetical explanation that a mandate is merely ministerial and does not itself actually effectuate the finality of the judgment. See Luyster v. Principi, 16 Vet.App. 96, 98 (2002) (per curiam order); Strouth v. Brown, 8 Vet.App. 502, 504 (1996) (per curiam order). Subsection (b) is amended because, concurrent with the revision of these rules, the Court is issuing a change to its IOPs that will provide for the issuance of mandate following the dispositions of applications for attorney fees and expenses. The Court will also issue mandates following dispositions of petitions, which are included in the term "cases." See "Reason" for Rules 21, 36, and 39.]

RULE 42. VOLUNTARY TERMINATION OR DISMISSAL

If the parties file with the Clerk a motion to terminate ~~an appeal or petition~~ a matter (other than an application for attorney fees and expenses) based upon a settlement agreement to be effective upon the Court's termination of the case, the Clerk may enter the case terminated. On motion of the appellant or petitioner ~~to for dismissal, an appeal, or petition, or application for attorney fees and expenses~~ may be dismissed by the Clerk on terms requested by the appellant or petitioner, agreed upon by the parties, or previously fixed by the Court.

[Reasons: This rule is amended to clarify that the procedure for requesting Court action in the form of a "termination" (rather than a "dismissal") in the event of settlement is meant for settlements on the merits of a case and not on the application for attorney fees and expenses.]

RULE 43. SUBSTITUTION OF PARTIES

(a) Death of a Party.

(1) *Before Notice of Appeal.* If a party entitled to appeal dies before filing a Notice of Appeal, the Notice of Appeal may; ~~to the extent permitted by law, be filed within the time limit in Rule 4 by any person permitted by law to do so~~ claiming entitlement to accrued benefits under 38 U.S.C. § 5121(a), by the personal representative of the deceased party's estate, by any other appropriate person, or, if there is no such person, by the party's representative of record before the Board.

(2) *After Notice of Appeal.* If a party dies after a Notice of Appeal is filed or while a proceeding is pending in the Court, ~~any person claiming entitlement to accrued benefits under 38 U.S.C. § 5121(a), the personal representative of the deceased party's estate, or any other appropriate person may, to the extent permitted by law, be substituted as a party on motion by such person or by any party. If no such person exists, a~~ Any party may suggest notify the Court of the death on the record of an appellant, and proceedings will then be as the Court directs.

(b) Substitution for Other Causes. If substitution of a party in the Court is necessary for any reason other than death, the Court may order ~~it on motion of any party or substitution~~ on its own initiative or on a party's motion.

(c) ~~Public Officers; Death or Separation from Office of Public Officer.~~

~~(1) Naming as Party. The Secretary must be described as the appellee by name and by official title. Any public officer who is a respondent must be described by official title rather than by name; but the Court may require that the name of the public officer be added.~~

~~(2) Death or Separation. When a public officer is a party in an official capacity and during the proceedings dies, resigns, or otherwise ceases to hold office, the proceedings are not stopped, and the public officer's successor is automatically substituted as a party. Proceedings following the substitution ~~must~~ will be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties will be disregarded.~~

[Reason: Subsection (a) of this rule is revised in order to conform the rule to the Court's decision in Landicho v. Brown, 7 Vet.App. 42 (1994). Paragraph (1) of subsection (c) has been moved to Rule 4(b)(2).]

RULE 44. JUDICIAL CONFERENCE

(a) Purpose. Pursuant to 38 U.S.C. § 7286, there shall be convened, at such time and place as the Chief Judge designates, a conference to consider the business of the Court and to recommend means of improving the administration of justice within the Court's jurisdiction.

(b) Committee. The Chief Judge will appoint a Judicial Conference Planning Committee to plan and conduct the conference. The Planning Committee may appoint such subcommittees as may be necessary to assure the efficient operation of the conference.

(c) Attendance. The Chief Judge presides at the conference. All persons admitted to practice before the Court, and such other persons as are designated by the Chief Judge, may be members of and participate in the conference.

(d) Registration Fee. Each member of the conference other than judges of the Court must ~~shall~~ pay a registration fee in an amount fixed by the Court to defray expenses of the conference. The Chief Judge may excuse the payment of the fee in individual cases. These fees ~~shall be maintained in a bank account which shall be known as the "CVA Judicial Conference Fund." Money from this account shall be disbursed by the Clerk at the direction of the Chief Judge to defray conference expenses. Any excess shall be used to pay future conference-related expenses~~ are governed by 38 U.S.C. § 7285.

(e) Responsibility of the Clerk. The Clerk ~~shall be~~ is responsible for receipt and disbursement of conference funds, for all conference records and accounts, and for conference staff support, and ~~shall~~ performs such other duties pertaining to the conference as may be directed by the Chief Judge.

(f) Delegation. The Chief Judge may delegate any or all of his or her responsibilities to another judge of the Court.

[Reason: This rule is revised in order to comport with a change in the governing statutory provisions.]

RULE 45. DUTIES OF CLERK

(a) General Provisions. The Clerk ~~shall~~ must take the oath required by law. Neither the Clerk nor any deputy clerk may practice as an attorney or counselor in any court while continuing in office. The Court ~~will be deemed~~ is always open for the purpose of filing any proper paper, of issuing and returning process, ~~and~~ of making motions, and of entering orders. The office of the Clerk, with the Clerk or a deputy clerk in attendance, ~~will be~~ is open during business hours on all days except Saturdays, Sundays, ~~and~~ legal holidays, and other days when the Court is closed (as defined in Rule 26(a) from 9:00 a.m. to 4:00 p.m. A night box will be available at the entrance to the Public Office from 4:00 p.m. to 6:00 p.m. on ~~such business~~ all days that the Court is open.

(b) The Docket; Calendar; Other Records Required. The Clerk ~~shall~~ will --

- (1) maintain a docket containing a record of all papers filed with the Clerk, and all process, orders, and judgments;
- (2) maintain an index of cases contained in the docket;
- (3) prepare, under the direction of the Court, a calendar of cases submitted or awaiting argument; and
- (4) keep such other books and records as may be required by the Court.

(c) **Notice of Court Actions.** Immediately upon issuance of an opinion, memorandum decision, ~~or order, or entry of the~~ judgment, or issuance of the mandate, the Clerk ~~shall~~will send a copy to each party to the proceeding; and ~~shall~~note in the docket the ~~date of issuance or entry date in the docket~~.

(d) **Custody of Records and Papers.** The Clerk ~~shall~~will have custody of the records and papers of the Court. The Clerk ~~shall~~will not permit any original record or paper to be taken from the Clerk's custody except as authorized by the United States Supreme Court, the United States Court of Appeals for the Federal Circuit, or the Court. Original papers transmitted as the record on appeal will be returned upon disposition of the case. The Clerk ~~shall~~will preserve copies of briefs and appendices and other printed papers filed.

(e) **Court Seal.** The Clerk ~~shall be~~is the custodian of the seal of the Court. The seal will appear as ordered by the Court. The seal ~~will be~~is the means of authentication of all records and certificates and process issued from the Court.

(f) **Schedule of Fees.** The Clerk ~~shall~~will maintain in the Public Office a schedule of fees approved by the Court.

(g) **Motions.** The Clerk may act on motions, if consented to or unopposed, that seek to --

(1) dismiss or terminate an appeal or ~~an application for extraordinary relief~~petition with or without prejudice to reinstate it;

(2) remand a case;

(3) reinstate a case that was dismissed for failure to comply with the rules;

(4) extend the time for taking any action required or permitted by the rules or by an order of the Court, unless the motion is made after the time limit has elapsed;

(5) consolidate appeals;

(6) withdraw or substitute an appearance; or

(7) correct a brief or other paper.

(h) **Applications for Attorney Fees and Expenses.** The Clerk may ~~act on~~grant an application for attorney fees and expenses filed pursuant to 28 U.S.C. § 2412(d)-(EAJA) when the Secretary does not contest the application, and ~~on~~may grant joint motions to dismiss ~~EAJA~~such applications.

(i) **Sua Sponte Dismissal of Cases.** The Clerk may dismiss a case for the appellant's failure to pay the filing fee or to file a brief. ~~If a party's motion for reconsideration by the Clerk of a case dismissed by the Clerk under this subsection is not granted by the Clerk, the matter must be referred for decision by a judge. See also Rule 35(a).~~

(j) **Construction of Rules in Self-Representation Cases.** Consistent with the practice of the Court, ~~The Clerk shall~~will liberally construe the rules as they apply to self-represented appellants ~~representing themselves~~.

(k) Return of Papers. The Clerk is authorized to return to the author any paper that is not in compliance with these rules.

[Reason: This rule is revised by deleting in subsection (i) the second sentence, the substance of which is in Rule 35(a), and by adding subsection (k) to grant general authority to the Clerk to return noncompliant papers in addition to the specific authority and directions given in other rules, e.g., Rules 5(c) and 26(b)(5).]

RULE 46. REPRESENTATION

(a) Admission of Attorneys to ~~Practice~~ Bar of Court.

(1) *General.* A person of good moral character and repute who has been admitted to practice in the Supreme Court of the United States, or the highest court of any state, the District of Columbia, or a United States territory, ~~possession,~~ or commonwealth ~~of the United States~~ within the meaning of 48 U.S.C. § 1904(e)(5), and is in good standing therein, may be admitted to the bar of the Court upon application. See Rules of Admission and Practice.

(2) *Application.* An attorney at law may be admitted to the bar of the Court upon filing with the Clerk a completed application accompanied by the ~~prescribed~~applicable fee (payable by check or money order) and a current certificate from the clerk of the appropriate court showing that the applicant is a member in good standing of the bar of one of the courts named in ~~subparagraph (1) of this subsection.~~ A current court certificate is one executed ~~within three~~not earlier than 3 months preceding before the date of the filing of the application.

(b) Admission of Nonattorney Practitioners to Practice. A nonattorney of good moral character and repute who is --

(1) under the direct supervision (including presence at any oral argument) of an attorney admitted to the bar of the Court,
or

(2) employed by an organization ~~which~~that is chartered by Congress, is recognized by the Secretary of Veterans Affairs for claims representation, and provides a statement signed by the organization's chief executive officer certifying to the employee's --

(A) understanding of the procedures and jurisdiction of the Court and of the nature, scope, and standards of its judicial review; and

(B) proficiency to represent appellants before the Court

may be admitted to practice before the Court upon filing with the Clerk a completed application accompanied by the ~~prescribed~~applicable fee (payable by check or money order). In making the ~~certification in substatement~~ under this paragraph (2), the chief executive officer should be aware that knowledge of and competence in veterans law and the administrative claims process does not in and of itself connote competence in appellate practice and procedure.

(c) Appearance in a Particular Case. On motion and a showing of good cause, the Court may permit any attorney or nonattorney practitioner not admitted to practice before the Court, or any other person in exceptional circumstances, to appear on behalf of a party or amicus for the purposes of a particular case. Whenever a person is admitted to practice under this subsection, the person ~~shall~~will be deemed to have conferred disciplinary jurisdiction upon the Court for any alleged misconduct in the course of, in the preparation for, or in connection with any proceeding in that case.

(d) Representation Requirements.

(1) *Practitioner defined.* A person who has been admitted ~~to practice~~ under subsections (a) or (b), or has been permitted to appear under subsections (c) ~~of this Rule 46~~ is referred to in this subsection ~~(d)~~ as a practitioner.

(2) *Appearance.* No practitioner may appear ~~on behalf~~ as a representative of a party or amicus in any proceedings in a case without first filing --

(A) a written notice of appearance in the detail ~~prescribed by~~ set out in Form 3 in the Appendix of Forms, served in compliance with Rule 25; and

(B) unless the representation is without charge to that party, a copy of the fee agreement if the practitioner is representing an appellant or petitioner or intervenor, ~~unless the representation is without charge to that party. If the agreement provides for direct payment out of past due benefits under 38 U.S.C. § 5904, a~~ copy of the agreement must be served on the Secretary.

An appearance may not be made in the name of a law firm or other organization.

(3) ~~Papers Filed by a Non-attorney~~ Filings by nonattorney practitioner. Each ~~paper~~ notice of appearance and pleading filed by a nonattorney practitioner must include the name, address, and signature of the responsible supervising attorney under ~~Rule 46~~ subsection (b)(1) or the identification of the employing organization under ~~Rule 46~~ subsection (b)(2).

(4) *Withdrawal.* ~~If another practitioner has previously entered an appearance on behalf of a party, a~~ A practitioner may withdraw from a case by filing a notice stating that the party has consented to the withdrawal, ~~if another practitioner has previously entered an appearance on behalf of the party.~~ Otherwise, a practitioner may not withdraw from a case without obtaining the Court's permission by filing a motion to withdraw that --

(A) lists the client's current address and telephone number; and

(B) ~~assures~~ saves to the Court that --

(i) the client has been notified of the motion to withdraw; and

(ii) copies of all papers filed by the parties, all notices and orders accumulated by the practitioner, and all files belonging to the client have been sent to the client or to a named substitute practitioner.

The practitioner's authority and duty continue until he or she is relieved by the Court, subject to conditions that the Court considers appropriate.

(5) *Change of address.* Each practitioner ~~and self-represented party~~ must notify ~~give~~ the Clerk and all other parties written ~~notice (not included in another filing)~~ of any change of his or her address or telephone number. Such a notice by a practitioner must

list, by docket number and title, each pending case in which that practitioner is a representative in the Court. Absent such notice, the mailing of documents to the address most recently provided by that person will be fully effective.

(6) ~~Limited representation appearance.~~ ~~This Rule 46(d) Paragraphs (2) through (4) of this subsection does not apply when a practitioner files a Notice of Appeal on behalf of an appellant and specifies that the representation appearance is limited to that filing. The practitioner must include his or her name, address, and telephone number on such a Notice of Appeal.~~

(7) ~~Subsections VA practitioners.~~ Paragraphs (2)(B), (4), (5), and (6) of this ~~Rule 46(d) subsection~~ do not apply to practitioners representing the Secretary.

(e) (Rescinded)

(f) **Appearance by Law Students.**

(1) General. An eligible law student, with the written consent of the appellant and the attorney of record, who must be a member of the bar of the Court, may appear in the Court as provided in this subsection.

(2) Participation defined. An eligible law student may participate in the preparation of briefs and other documents to be filed in the Court, but such briefs or documents must be signed by the attorney of record. The student may also participate in oral argument with leave of the Court, but only in the presence of the attorney of record. The attorney of record ~~shall~~ must assume personal professional responsibility for the law student's work and for supervising the quality of his or her work. The attorney ~~should~~ must be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.

(3) Conditions of appearance. In order to make an appearance pursuant to this rule, the student must --

(A) be duly enrolled in a law school approved by the American Bar Association;

(B) have completed legal studies amounting to at least four semesters, or the equivalent if studies are scheduled on other than a semester basis;

(C) be certified, by the dean of the law school in which the law student is enrolled, as being of good character and competent legal ability; ~~—F~~ (this certification must be filed with the Clerk and may be withdrawn at any time by the dean, upon written notice to the Clerk, or by the Court, without notice of hearing and without any showing of cause);

(D) be introduced by the attorney of record in the case;

(E) neither ask for nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf such services are rendered, but this will not prevent an attorney, legal aid bureau, law school, a state, the District of Columbia, or a United States territory or commonwealth within the meaning of 48 U.S.C. § 1904(e)(5), or the United States from paying compensation to the eligible law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require;

(F) certify in writing that he or she has read and is familiar with the code of professional responsibility or rules of professional conduct in effect in the state or jurisdiction in which the student's law school is located and with the rules governing practice in the Court (see Rule 4 of the Rules of Admission and Practice).

~~(g) Self-representation.~~ ~~Any appellant, petitioner, or intervenor may be self-represented before the Court.~~

[Reason: This rule is revised in order to specify the distinction between membership in the Court's bar and admission to practice before the Court as a nonattorney; to clarify in subsections (a) and (f) what qualifies as a United States territory or commonwealth (see In re Unger, ___ Vet.App. ___, No. 02-8001 (Jul. 29, 2002) (per curiam order)); to clarify to whom subsection (c) relates; to clarify in subsection (d)(2)(B) that copies of all fee agreements must be served on the Secretary (see 38 U.S.C. § 5904(c)(3)); to clarify in subsection (d)(3) that a Notice of Appeal filed by a nonattorney practitioner admitted under subsection (b)(1) need not be counter signed by the supervising attorney or include that attorney's name and address; to add to subsection (d)(5) a requirement for a more detailed change-of-address notice; and to delete subsection (g), which becomes part of a new Rule 46.1.]

RULE 46.1. SELF-REPRESENTATION

Any appellant, petitioner, or intervenor may be self-represented before the Court. A self-represented party must give the Clerk and all other parties written notice (not included in another filing) of any change of his or her address or telephone number. Absent such notice, the mailing of documents to the address most recently provided by that person will be fully effective. See also Rules 25(b)(3) (filing by inmate), 28(h) (informal brief), 32(h) (identification in brief), 33(a) (staff conference), and 45(j) (rules construed liberally for self-represented appellants).

[Reason: This new rule is established to highlight rules related to self-represented persons, which are otherwise hard to find.]

RULE 47. EXPEDITED CONSIDERATION

(a) **Motion and Order.** On a ~~party's~~ motion ~~of a party~~ for good cause shown, on written agreement of the parties, or on its own initiative, the Court may order that any matter before the Court be expedited.

(b) **Filing and Service of Papers.** Expedited proceedings will be scheduled as directed by the Court. Unless otherwise ordered, the appellant's principal brief ~~shall~~must be served and filed ~~within~~not later than 25 days after the date of the Clerk's notice that the record on appeal has been filed. ~~T~~he Secretary's brief ~~shall~~must be served and filed ~~within~~not later than 15 days after service of the appellant's brief. ~~A~~nd any reply brief ~~shall~~must be served and filed ~~within~~not later than 10 days after service of the Secretary's brief.

(c) **Form and Length of Briefs.** Briefs filed under this rule must comply with Rules 28 and 32, except that principal briefs must be limited to ~~10~~12 pages, reply briefs must be limited to ~~five~~5 pages, and a table of authorities is not required.

(d) **Supplementation of the Transmitted Record.** If expedited proceedings are ordered, any motion for supplementation of the record on appeal must be served and filed before the date on which the appellant's brief is due. See also Rule 11(b). Unless the Court orders otherwise, ~~Such~~ supplementation does not extend the time for filing any brief.

[Reason: This rule is revised to increase the page limit in subsection (c) proportionate to the increase in Rule 32(g) and to conform subsection (d) to Rule 11(b)(4).]

RULE 48. ~~DISCLOSURE OF CERTAIN PROTECTED RECORDS~~SEALING OF CASES

(a) **Cases Involving Protected Records.** If, during the time periods set out in Rule 10 or at any other time during a proceeding before the Court, the parties identify records protected by 38 U.S.C. § 7332 and at least one of the parties believes that disclosure of such records is required in such proceeding and, further, the parties cannot agree with respect to the disclosure of such records, the party requesting disclosure ~~shall~~must make immediate application therefor, pursuant to 38 U.S.C. § 7332(b)(2)(D), caption the case "In re: Sealed Case No. [insert Court of Appeals for Veterans Claims case number]" (not disclosing the identity of any individual), and serve on the protected ~~patient or subject person~~ or successor in interest a copy of the application. Such application must include a statement specifying those steps taken by the parties to reach agreement before application was made to the Court. Upon receipt of such application, unless otherwise directed by the Court, the Clerk, ~~unless otherwise ordered by the Court,~~ ~~shall~~will enter the case as "withdrawn" on the docket, assign a new case number and recaption the case using an encoded identifier, and seal the record on appeal and the file of the Court. Thereafter, any party or representative of a party, unless otherwise ordered by the Court, ~~shall refer~~must make reference in any subsequent filing only to the new case number and caption assigned by the Clerk.

(b) **Other Cases.** The procedures described in this rule may, in the Court's discretion, be applied to cases that the Court orders sealed but ~~which~~that do not contain records protected by 38 U.S.C. § 7332.

RULE 49. COMPLAINTS AGAINST JUDGES

Rules for the processing of complaints of judicial misconduct or disability have been adopted by the Court pursuant to 28 U.S.C. § 372(c). Copies are available from the Clerk on request.